IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7332 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAMPATBHAI MOHANBHAI KHATRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7332 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu,

has challenged his detention order dated 21.5.2004. By the impugned order, the petitioner-detenu is detained in exercise of the powers under sec.3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM", for short), as it is found by the authority that he has indulged in black marketing.

2. Along with the detention order, the detenu was also served with the grounds of detention. In the grounds of detention, it is stated that the petitioner is purchasing blue kerosene from various tempo drivers and thereafter selling the same at a higher price and thereby is indulging in black marketing activities. The detaining authority, after making necessary inquiry and after considering some statements of the witnesses and after reaching the subjective satisfaction, has detained him under the PBM. The said detention order is challenged by the petitioner by way of this petition.

3. At the time of hearing of this petition, it is submitted by learned advocate for the petitioner that there is a delay in despatching the representation by the detaining authority to the Central Government as well as there is a delay at the hands of Central Government in deciding the representation. It is further submitted that the petitioner made a representation to the detaining authority on 25.6.2004. In the said representation, he had also requested in para 9 that the copies of said representation may be taken out and same may be transmitted to the concerned authority. It is further submitted that the detaining authority has received the said representation on 28.6.2004, and on the same day, the representation was sent to the State Government. However, the said representation was forwarded to the Central Government after about two days i.e. on 30.6.2004, though it was sent to the State Government on that very day. It is further submitted that there is no proper explanation for keeping the said representation on that day by the State Government and forwarding the same after two days to the Central Government.

4. In this behalf reference is made to the decision of the learned Single Judge of this Court dated 17.3.2004 delivered in Special Civil Application No.17323 of 2003. In the said judgment there was a delay of one day in sending the representation. It has been observed in para 4 to 6 as under:

"para.4 The learned advocate for the petitioner

has contended that the petitioner had submitted a written representation on 02/12/03 to respondent no.2, that it was received by the office of respondent no.2 on 03/12/03. The said office forwarded it to the State Government on 05/12/03, since, the State Government had already approved the detention of the petitioner. Hence, the second respondent could not deal with and decide the same. The learned advocate for the petitioner has contended that though the representation was received on 03/12/03, it was not forwarded on the same day or on the next day, instead, it was forwarded on 05/12/03. Therefore, there was a delay in forwarding the same to the State Government.

para.5 The learned advocate for the petitioner has relied upon a decision of this Court dated 19/06/01 in S.C.A. No.12634/2000. The learned Single Judge (Coram: Hon'ble Mr.Justice H.K.Rathod) had referred to certain other decisions and had thereafter, held that, when there is a delay in forwarding the representation and when the said delay has not been explained, the further detention of the detenu cannot be termed as legal and valid. In the said decision, the learned Single Judge had taken into consideration decisions reported in the cases of State of Punjab V/s. Sukhpal Singh : AIR 1990 SC 231 and Harish Pahwa V/s. State of U.P. & Ors. : AIR 1981 SC 1126. The learned Single Judge also considered a decision of this Court rendered in S.C.A. No.9664/1990 dated 16/03/2000.

para.6 After considering the said three decisions, the learned Single Judge came to a conclusion that delay in forwarding the representation was fatal to the order of detention and therefore, the order of detention was required to be quashed and set aside."

5. It was next argued by the learned advocate for the petitioner that the Central Government has received the representation on 5.7.2004 and it was decided on 9.7.2004. It is, therefore, submitted that there is a delay of about four days at the hands of the Central Government in deciding the representation.

6. On behalf of the Central Government, affidavit has been filed. In para 5 of the reply, it is stated

that the representation was received by the Central Government on 5.7.2004 through the office of the District Magistrate, Valsad, and the same was forwarded on 9.7.2004 to the Central Government. It is not stated as to why the same was not decided for three days. There is no explanation in this behalf in the said para 5 of the reply.

7. It is a well settled position of law that the representation is to be decided without undue delay, and if there is a delay, then the same is required to be explained. Under these circumstances, since there is a delay on the part of the State Government for which no proper explanation is given as well as there is a delay on the part of the Central Government for four days in deciding the representation of the petitioner which has not been properly explained for such delay, the petition is required to be allowed.

8. For the foregoing reasons, this petition is allowed. The order of detention dated 21.5.2004 is quashed and set aside. The detenu, Sampatbhai Mohanbhai Khatri, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

9. At this stage, learned advocate for the petitioner has submitted that the petitioner will not repeat such incidents in future. However, if there is repetition of such offences, then it is open to the State Government to apply for cancellation of bail.

(P.B. Majmudar, J.)

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